

MARK D. FOWLER (Bar No. 124235)
mark.fowler@dlapiper.com
DAVID ALBERTI (Bar. No. 220625)
david.alberti@dlapiper.com
CHRISTINE K. CORBETT (Bar No. 209128)
christine.corbett@dlapiper.com
YAKOV M. ZOLOTOREV (Bar No. 224260)
yakov.zolotorev@dlapiper.com
CARRIE L. WILLIAMSON (Bar No. 230873)
carrie.williamson@dlapiper.com

DLA PIPER US LLP
2000 University Avenue
East Palo Alto, CA 94303-2215
Tel: 650.833.2000
Fax: 650.833.2001

Attorneys for Plaintiff,
Sun Microsystems, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

NETWORK APPLIANCE, INC.,

Plaintiff – Counterclaim
Defendant,

v.

SUN MICROSYSTEMS, INC.,

Defendant -
Counterclaimant.

CASE NO. 3:07-CV-06053 EDL

Related Cases:

C-07-05488 EDL
C-08-01641 EMC

**PLAINTIFF SUN MICROSYSTEMS, INC.
ADMINISTRATIVE MOTION TO
CONSIDER WHETHER CASES SHOULD
BE RELATED, PURSUANT TO L.R. 3-12**

Pursuant to Civil Local Rule 3-12, Plaintiff Sun Microsystems, Inc. ("Sun") submits the following motion to consider whether this case should be related to another action pending in this District. The related cases are entitled:

1. *Network Appliance, Inc. v. Sun Microsystems, Inc.* – Case No. C 07-06053 EDL ("6053 Action").

The 6053 Action was filed on September 5, 2007 by Network Appliance, Inc. ("NetApp") in the Eastern District of Texas alleging that Sun has infringed and continues to infringe seven of

-1-

1 its United States patents and seeking a declaratory judgment that three of Sun's United States
 2 patents are not infringed and are invalid and/or unenforceable. Sun counterclaimed alleging that
 3 NetApp has infringed and continues to infringe twelve of its United States patents. The 6053
 4 Action was transferred to the Northern District of California on or about November 30, 2007.

5 2. *Sun Microsystems, Inc. v. Network Appliance, Inc.* – Case No. C 07-05488 EDL
 6 (“5488 Action”).

7 The 5488 Action was filed on October 29, 2007 by Sun alleging that NetApp has
 8 infringed and continues to infringe six of its United States patents and engaged in unfair
 9 competition under the Lanham Act and California Business and Professions Code § 17200, *et seq.*
 10 NetApp counterclaimed alleging that Sun has infringed and continues to infringe five of its
 11 United States patents and engaged in unfair competition under the Lanham Act and California
 12 Business and Profession Code § 17200, *et seq.*

13 3. *Sun Microsystems, Inc. v. Network Appliance, Inc.* – Case No. C 08-01641 EMC
 14 (“1641 Action”).

15 The 1641 Action was filed on March 26, 2008 by Sun alleging that NetApp has infringed
 16 and continues to infringe four of its United States patents. NetApp has not yet answered the
 17 complaint.

18 The cases are related in that: (i) the three actions concern the same parties—Sun and
 19 NetApp; and (ii) it appears likely that there will be an unduly burdensome duplication of labor
 20 and expense if the cases are conducted before different judges.

21 Sun has consulted with NetApp regarding this motion and NetApp is in agreement that
 22 these cases should be related.

23 ///

24 ///

25 ///

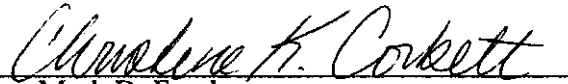
26 ///

27 ///

28

1 Dated: March 31, 2008.

DLA PIPER US LLP



Mark D. Fowler

David Alberti

Christine K. Corbett

Yakov M. Zolotorev

Carrie L. Williamson

Attorneys for Plaintiff

SUN MICROSYSTEMS, INC.